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Perry Tool & Research, Inc., Dave Bowa
and Dave Burton

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM WHITSITT,

vs.

PERRY TOOL & RESEARCH - Employer
DAVE BOWA - My Supervisor
DAVE BURTON-HR Manager
OTHER UNNAMED DEFENDANTS

CASE NO.: C08-00771 WDB

ANSWER TO COMPLIANT FOR
ADEA CLAIM AND RETALIATION
FOR ADEA CLAIM AND
RETALIATION FOR CLAIM
AGAINST ANOTHER EMPLOYER

DEMAND FOR JURY TRIAL

Defendants Perry Tool & Research, Inc., David Bowa and David Burton respond to
Plaintiff William Whitsitt's Complaint as follows:

§ 1343. CIVIL RIGHTS AND ELECTIVE FRANCHISE

Defendants Perry Tool & Research, Inc., David Bowa and David Burton ("Defendants")
respond as follows to the unnumbered Paragraphs in the section entitled "§1343. Civil Rights
and Elective Franchise": Defendants acknowledge that Plaintiff purports to bring this claim
under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991. As to
all other statements and allegations in this section entitled "§1343. Civil Rights and Elective
Franchise," Defendants respond: Denied.

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BRIEF HISTORY AND SUMMARY OF FACTS

Defendants respond to the unnumbered Paragraphs in the Section entitled "Brief History and Summary of Facts" as follows:

Defendant Perry Tool & Research, Inc. admits that Plaintiff Whitsitt did begin his relationship with Perry Tool & Research, Inc. as a temporary employee from Industrial Services, a Temporary Employment Agency. As to all of the other allegations in the unnumbered Paragraphs in this Section entitled "Brief History and Summary of Facts," Defendants responds:

Defendants lack sufficient information to either admit or deny all the material allegations in these unnumbered Paragraphs and on that basis, respond to each and every material allegation in these unnumbered Paragraphs: Deny.

(#1.) - ADEA DISCRIMINATION

Defendants respond as follows to the material allegations contained in the unnumbered Paragraphs under the Subsection with the heading "(#1.) – ADEA Discrimination" as follows:

Defendant Perry Tool & Research, Inc. admits that Mr. Whitsitt was over 50 years of age at the time of his termination. As to all other material allegations contained in the unnumbered Paragraph under the Subsection entitled "(#1.) – ADEA Discrimination": Defendants lack sufficient information at this time to either admit or deny all the material allegations in these unnumbered Paragraphs and on that grounds responds to each of the material allegations in these unnumbered Paragraphs: Denied.

(#1A.) - FAILURE OF EMPLOYER TO INVESTIGATE ADEA AND RETALIATION CLAIMS

Defendants respond to each of the unnumbered Paragraphs in the Subsection entitled "(#1A.) – Failure of Employer to Investigate ADEA and Retaliation Claims" as follows:

To the extent that Plaintiff recites verbatim the Statute entitled "Age Discrimination in Employment Act," Defendants admit that those Statutes exist. As to each of the other material allegations contained in the unnumbered Paragraphs under this Section entitled "(#1A.) – Failure of Employer to Investigate ADEA and Retaliation Claims," Defendants respond: Denied.

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1 **(#1B.) - DISPARATE IMPACT OR TREATMENT ADEA CLAIM**

2 Defendants respond to the unnumbered Paragraphs contained in the Subsection entitled
3 “(#1B.) – Disparate Impact or Treatment ADEA Claim” as follows: Denied.

4 **(#2.) - RETALIATION FOR DISCRIMINATION CLAIMS**

5 Defendants respond as follows to the unnumbered Paragraphs in the Subsection entitled
6 “(#2) – Retaliation for Discrimination Claims” as follows:

7 To the extent that Plaintiff tries to restate sections from a legal treatise, Defendants lack
8 sufficient information and belief to determine if these are an accurate statement. As to all the
9 material allegations remaining in the unnumbered Paragraphs in this Section entitled “(#2) –
10 Retaliation for Discrimination Claims,” Defendants respond: Denied.

11 **(#2A) - RETALIATION FOR DISCRIMINATION CLAIM AGAINST ANOTHER**
12 **EMPLOYER**

13 Defendants respond as follows to the unnumbered Paragraphs in the Subsection entitled
14 “(#2A) – Retaliation for Discrimination Claim Against Another Employer” as follows:

15 To the extent that Plaintiff tries to restate sections from a legal treatise, Defendants lack
16 sufficient information and belief to determine if these are an accurate statement. As to all the
17 material allegations remaining in the unnumbered Paragraphs in this Section entitled “(#2A) –
18 Retaliation for Discrimination Claim Against Another Employer,” Defendants respond: Denied.

19 **(#3) - INDIVIDUALLY NAMED DEFENDANTS UNDER FEHA**

20 Defendants respond to the unnumbered Paragraphs in the Section entitled “(#3) –
21 Individually Named Defendants Under FEHA” as follows:

22 Defendants lack sufficient information at this time to either admit or deny whether or not
23 the quotes that appear to be taken from legal treatises are true and correct and on that basis
24 respond: Deny. As to all the material allegations in the unnumbered Paragraphs in this Section
25 entitled “(#3) – Individually Named Defendants Under FEHA,” Defendants respond: Denied.

26 **RETALIATION ACTS IN VIOLATION OF PUBLIC POLICY BY DAVE BOWA**

27 Defendants respond to the unnumbered Paragraph in the Section entitled “Retaliation
28 Acts in Violation of Public Policy By Dave Bowa” as follows: Denied.

RETALIATION ACTS IN VIOLATION OF PUBLIC POLICY BY DAVE BURTON

Defendants respond to the unnumbered Paragraphs in the Section entitled "Retaliation Acts in Violation of Public Policy By Dave Burton" as follows: Denied.

(#4) - WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY BY EMPLOYER

Defendants respond to the unnumbered Paragraphs in this Section entitled "(#4) – Wrongful Termination in Violation of Public Policy by Employer" as follows:

Defendants lack sufficient information and belief to determine the validity of the apparent citations from case law as stated in this Section and on that basis respond: Denied. As to all the other material allegations in the unnumbered Paragraphs under this Subsection entitled "(#4) – Wrongful Termination in Violation of Public Policy by Employer," Defendant Perry Tool & Research, Inc. responds: Denied.

(#5.) - WRONGFUL TERMINATION IN RETALIATION FOR DISCRIMINATION AND RETALIATION CLAIM

Defendants respond to the unnumbered Paragraphs in this Section entitled "(#5) – Wrongful Termination in Retaliation for Discrimination and Retaliation Claim" as follows:

Defendants lack sufficient information and belief to determine the validity of the apparent citations from case law as stated in this Section and on that basis respond: Denied. As to all the other material allegations in the unnumbered Paragraphs under this Subsection entitled "(#5) – Wrongful Termination in Retaliation for Discrimination and Retaliation Claim," Defendant Perry Tool & Research, Inc. responds: Denied.

(#6.) - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Defendants respond to the unnumbered Paragraph in the Section entitled "(#6) Intentional Infliction of Emotional Distress" as follows: Denied.

IN CONCLUSION

Defendants respond to the unnumbered Paragraphs in the Section entitled "In Conclusion" as follows: Denied.

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DAMAGES SOUGHT

Defendants respond to this apparent claim for damages and Prayer for Relief sought by Plaintiff as follows: Defendants deny that Plaintiff has been injured in any manner economically or otherwise, by their actions individually or collectively and on that basis deny that the Plaintiff has any right of recovery of any damages in this matter.

FIRST AFFIRMATIVE DEFENSE

1. As a first separate and affirmative defense to Plaintiff's Complaint in this action, the Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. As a second and separate affirmative defense to Plaintiff's Complaint in this action, the Complaint is barred as Charging Party failed to exhaust his administrative remedies.

THIRD AFFIRMATIVE DEFENSE

3. As a third separate and affirmative defense to Plaintiff's Complaint in this action, the Complaint is barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth separate and affirmative defense to Plaintiff's Complaint in this action, the Complaint, fails as a matter of law due to uncertainty.

FIFTH AFFIRMATIVE DEFENSE

5. As a fifth separate and affirmative defense to Plaintiff's Complaint in this action, Defendant Perry Tool & Research, Inc. has established and enforced a clear policy to prevent and correct promptly any discriminating conduct.

SIXTH AFFIRMATIVE DEFENSE

6. As a sixth separate and affirmative defense to Plaintiff's Complaint in this action, Plaintiff failed to report his claim of alleged discrimination as required under Defendant Perry Tool & Research, Inc.'s established policy for the reporting of any claim of discrimination.

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SEVENTH AFFIRMATIVE DEFENSE

7. As a seventh separate and affirmative defense to Plaintiff's Complaint in this action, Plaintiff's termination was due to a legitimate business necessity and not motivated by any animus or prejudice.

EIGHTH AFFIRMATIVE DEFENSE

8. As an eighth separate and affirmative defense to Plaintiff's Complaint in this action, and each claim therein against the Individually Named Defendants, the claims against the Individually named Defendants are barred as a matter of law.

NINTH AFFIRMATIVE DEFENSE

9. As a ninth separate and affirmative defense to Plaintiff's Complaint in this action, the Complaint, and each claim therein, is barred by Plaintiff's own conduct, actions and inactions, which amount to and constitute an estoppel of the causes of action and any relief sought thereby.

TENTH AFFIRMATIVE DEFENSE

10. As a tenth separate and affirmative defense to Plaintiff's Complaint in this action, the Complaint, and each claim therein, is barred by Plaintiff's own conduct, actions and inactions, which amount to and constitute unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

11. As an eleventh separate and affirmative defense to Plaintiff's Complaint in this action, while Defendants deny that Plaintiff has been damaged in any manner as a result of any acts or omissions by Defendants, if it should be determined that Plaintiff has been damaged and that Defendants are liable, then any recovery awarded should be reduced by the amount of damages that could have been avoided by reason of Plaintiff's failure to mitigate his damages.

TWELFTH AFFIRMATIVE DEFENSE

12. As a twelfth separate and affirmative defense in this action, on information and belief, diversity jurisdiction is not present in this action.

THIRTEENTH AFFIRMATIVE DEFENSE

13. As a thirteenth separate and affirmative defense to Plaintiff's Complaint in this action, the conduct, as alleged in the Complaint, even if true, does not constitute "oppressive, willful, malicious, or wanton" behavior sufficient to justify an award of punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE

14. As a fourteenth separate and affirmative defense to Plaintiff's Complaint in this action, Defendants did not treat Plaintiff differently or less favorably than other employees because of his age. As such, Plaintiffs' claims for violation of the ADEA are without merit.

FIFTEENTH AFFIRMATIVE DEFENSE

15. As a fifteenth separate and affirmative defense to Plaintiff's Complaint in this action, Plaintiff has failed to establish the required causal connection between Plaintiff's age and his termination. As such, Plaintiff's claim of discrimination based on age is without merit.

SIXTEENTH AFFIRMATIVE DEFENSE

16. Defendants did not treat Plaintiff less favorably than other employees because of age. As such, Plaintiff's claim for age discrimination is without merit.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Defendants did not treat persons over the age of 40 less favorably than other employees because of their age. As such, Plaintiff's claim for age discrimination based on a theory of disparate impact is without merit.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Plaintiff's claims for retaliation are barred as Plaintiff's termination did not result from or arise out of Plaintiff's engagement in any protected activities.

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NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiff's purported Cause of Action for wrongful termination in violation of public policy is barred as Defendant Perry Tool & Research, Inc. had a legitimate non-discriminatory basis on which to terminate Plaintiff.

TWENTIETH AFFIRMATIVE DEFENSE

20. As a twentieth separate and affirmative defense to Plaintiff's Complaint in this action, Defendants reserve the right to assert and raise at trial any and all subsequently discovered affirmative defenses.

PRAYER FOR RELIEF

Wherefore, Perry Tool & Research, Inc, David Bowa and David Burton request that this Court:

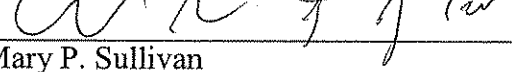
- A. Enter Judgment for Defendants and against Plaintiff on all Causes of Action and Claims made by Plaintiff in this Action.
- B. Dismiss Plaintiff's Complaint and all claims and Causes of Action contained therein with prejudice.
- C. Award Defendants their fees and costs incurred in this action as allowed by statute.
- D. For such other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Defendants Perry Tool & Research, Inc., David Bowa and David Burton. hereby demand a jury trial.

Dated: March 11, 2008

BOWLES & VERNA LLP

By: 
Mary P. Sullivan
Attorneys for Defendants
Perry Tool & Research, Inc., Dave Bowa
and Dave Burton

PROOF OF SERVICE
(Whitsitt v. Perry Tool et al. U.S. D.C. Case No. C08-00771 WDB)

I, the undersigned, declare:

I am a citizen of the United States of America, am over the age of eighteen (18) years, and not a party to the within action. I am an employee of Bowles & Verna, and my business address is 2121 North California Blvd., Suite 875, Walnut Creek, California 94596.

On March 11, 2008, I caused to be served the following document(s):

**ANSWER TO COMPLIANT FOR ADEA CLAIM AND RETALIATION FOR ADEA
CLAIM AND RETALIATION FOR CLAIM AGAINST ANOTHER EMPLOYER**

on the parties involved addressed as follows:

William Whitsitt 335 W. Clover R Tracy, CA 95376 (209) 221-1405 <u>In Pro Per</u>	
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 BY PERSONAL DELIVERY: *I caused each such envelope to be delivered by hand to the above named individuals personally.*

 X **BY MAIL:** *I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Walnut Creek, California. I am readily familiar with the business practice for collection and processing of mail in this office; that in the ordinary course of business said document would be deposited with the US Postal Service in Walnut Creek on that same day. I understand that service shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained on this declaration.*

 BY FACSIMILE: *By use of facsimile machine telephone number 925-256-1755 or 925-935-0371, I served a copy of the within document on the above interested parties at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting facsimile machine.*

 BY FEDERAL EXPRESS OVERNIGHT DELIVERY: *I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by Federal Express. I am readily familiar with Bowles & Verna's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Bowles & Verna's business practice the document described above will be deposited in a box or other facility regularly maintained by Federal Express or delivered to an authorized courier or driver authorized by Federal Express to receive documents on the same date that it is placed at Bowles & Verna for collection.*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 EXECUTED: March 11, 2008, at Walnut Creek, California.


 Bonnie Mills